

112TH CONGRESS
2D SESSION

H. R. 5649

To amend the Commodity Exchange Act to clarify the exemptions for captive finance companies from the definition of major swap participant and from the swap clearing requirement.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 2012

Mr. SCHILLING (for himself, Mr. OWENS, and Mr. MCINTYRE) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the Commodity Exchange Act to clarify the exemptions for captive finance companies from the definition of major swap participant and from the swap clearing requirement.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Manufacturing Cer-
5 tainty and Captive Finance Affiliate Clarification Act”.

1 **SEC. 2. CLARIFICATION OF THE EXEMPTIONS FOR CAPTIVE**
2 **FINANCE COMPANIES FROM THE DEFINITION**
3 **OF MAJOR SWAP PARTICIPANT AND FROM**
4 **THE SWAP CLEARING REQUIREMENT.**

5 (a) EXCLUSION FROM DEFINITION OF MAJOR SWAP
6 PARTICIPANT.—Section 1a(33)(D) of the Commodity Ex-
7 change Act (7 U.S.C. 1a(33)(D)) is amended to read as
8 follows:

9 “(D) EXCLUSION OF CERTAIN CAPTIVE FI-
10 NANCE ENTITIES.—

11 “(i) IN GENERAL.—The definition
12 under this paragraph shall not include an
13 entity whose primary business is providing
14 financing that facilitates the sale or lease
15 of products by or on behalf of the parent
16 company or another subsidiary of the par-
17 ent company, and uses derivatives only for
18 the purpose of hedging underlying com-
19 mercial risks in a consolidated financing
20 and leasing portfolio, at least 90 percent of
21 which, as of the end of its preceding fiscal
22 year, is qualifying financing (including
23 loans, notes, installment sales contracts,
24 receivables, and operating and financing
25 leases).

1 “(ii) DEFINITIONS.—In this subpara-
2 graph:

3 “(I) QUALIFYING FINANCING.—
4 The term ‘qualifying financing’
5 means—

6 “(aa) any financing or lease
7 of, or that includes, a product; or

8 “(bb) any financing to or for
9 the benefit of an affiliate of the
10 entity, a distribution entity, or
11 any customer or affiliate of a dis-
12 tribution entity,

13 except that the term does not include
14 any financing that does not facilitate
15 the sale of a product manufactured by
16 the entity or its affiliates, as deter-
17 mined by the Commission.

18 “(II) PRODUCT.—The term
19 ‘product’ means—

20 “(aa) any good that is man-
21 ufactured or sold by an affiliate
22 of the entity; and

23 “(bb) any service that is
24 provided by an affiliate of the en-
25 tity.

1 “(III) DISTRIBUTION ENTITY.—

2 The term ‘distribution entity’ means a
3 person whose primary business is the
4 sale, lease or servicing of a product
5 that is manufactured by the entity or
6 its affiliates.

7 “(IV) AFFILIATE.—The term ‘af-
8 filiate’ means, with respect to an enti-
9 ty—

10 “(aa) a person that reports
11 information or prepares financial
12 statements on a consolidated
13 basis with the entity, or for
14 which a parent company reports
15 information or prepares financial
16 statements on a consolidated
17 basis for the person and the enti-
18 ty; or

19 “(bb) a person of which the
20 entity or the parent of the entity
21 holds 50 percent or more of the
22 equity interests.

23 “(V) PERSON.—The term ‘per-
24 son’ means an individual, partnership,
25 corporation (including a business

1 trust), limited liability company, joint
 2 stock company, trust, unincorporated
 3 association, joint venture or other en-
 4 tity, or a government or any political
 5 subdivision or agency thereof.”.

6 (b) EXCLUSION FROM SWAP CLEARING REQUIRE-
 7 MENT.—Section 2(h)(7)(C)(iii) of such Act (7 U.S.C.
 8 2(h)(7)(C)(iii)) is amended to read as follows:

9 “(iii) EXCLUSION OF CERTAIN CAP-
 10 TIVE FINANCE ENTITIES.—Such term shall
 11 not include an entity excluded from the
 12 definition of major swap participant by
 13 reason of section 1a(33)(D).”.

14 **SEC. 3. EFFECTIVE DATE.**

15 The amendments made by this Act shall take effect
 16 as if they had been included in subtitle A of title VII of
 17 the Dodd-Frank Wall Street Reform and Consumer Pro-
 18 tection Act.

○